

1 draft or whether I did it.

2 Q Do you know whether the correct answer was yes or  
3 no to paragraph five down at the bottom?

4 A Let's see --

5 Q As of July 20, 1987?

6 MS. SCHMELTZER: Objection. I think that really  
7 calls for a legal conclusion on the part of the witness.

8 MR. COLE: Well, Your Honor, in the form, he's  
9 being asked to represent precisely that.

10 JUDGE FRYSIAK: Yes, he may answer. Objection is  
11 overruled.

12 THE WITNESS: I don't know. I don't recall the  
13 specific discussions or if there were specific discussions  
14 regarding this particular section.

15 This used to be the section for insulation. I  
16 remember that, but this appears to be something different.  
17 So, I can't help you. If there are more documents you want  
18 me to look at, I can attempt to do that.

19 BY MR. COLE:

20 Q Well, what do you mean by the section for  
21 insulation?

22 A As I recall, in some of the other FCC forms, where  
23 my signature appears in that top right hand section, the  
24 bottom section, there was an element for limited partnership  
25 and whether it was insulated or non-insulated and that ran

1 to some specific regulations at that particular time.

2 So, I have some recollection of discussing this  
3 section. I guess those are on the Form 314's back then and  
4 I don't recall, you know, what we're driving at here.

5 Q Do you recall what the limited partnership  
6 insulation requirements were that you were familiar with?

7 A I remember that initially it was permissible for a  
8 limited partner to also hold some interest as a general  
9 partner. The Astroline Company, also being the owner of HCT  
10 Management, Inc. was permissible, but then characterized as  
11 not insulated. This is my recollection of it.

12 I recall that later on, as I testified earlier,  
13 the Commission adjudications and these administrative  
14 proceedings began to get more and more restrictive on that  
15 issue, which is what prompted the move of HCT Management,  
16 Inc. from the limited partners to me. And, that was for the  
17 purposes, as I said earlier, of integration, credit in a  
18 comparative proceeding.

19 So, I have that recollection of what insulated and  
20 non-insulated referred to and that's my recollection of it.  
21 And, I don't understand or I don't recall where we were  
22 going with this material. It's scratched out. You know,  
23 you can't read the whole thing here. So, I'm not  
24 particularly helpful, but for no other reason other than I  
25 don't recall. If you have another document, I'd be happy to

1 try and work my way back to it.

2 Q This is going to be a surprise. I've got another  
3 document. Turn to Shurberg 86, please. This is a letter  
4 from Ms. Harberg to you on July 29, '87, transmitting to you  
5 a revised ownership report. And, this revised ownership  
6 report is not signed, but I call your attention to the fact  
7 that in the lower right hand corner, the question that we  
8 were just looking at is now marked "Yes, see Exhibit 1,"  
9 rather than no, isn't that correct? If you want to refer to  
10 Exhibit 1?

11 A Right, I was just doing that. Okay.

12 Q So, again, can you tell me now whether the answer  
13 yes or no was the correct answer to paragraph five at the  
14 bottom? Does it help you at all?

15 A There's a certification statement included in the  
16 instructions. In 86, it appears that there was an Exhibit 1  
17 provided. In 82, it looks like they first said no, then  
18 they said yes, then they were trying to write something and  
19 looks to me like they were working their way through, given  
20 all the other annotated corrections to a more computed  
21 document and given the sequence of the letter, the letter  
22 coming on the 29th and my signature on the 20th. It looks to  
23 me like the document on the 29th is the work product or  
24 benefit of the consternation exercise on the 20th document.

25 Q Okay. Do you recall having any conversations at

1 all with Ms. Harberg or anyone else at Baker & Hostetler  
2 about any of this in 1987?

3 A I vaguely do. On the third side, which is the  
4 Section 5 on the number of votes and so forth, I have a  
5 vague -- I'm looking at the notations here. I'm not making  
6 the statement that those are mine. What I am making the  
7 statement is that I do recall discussing with someone, I  
8 think related to this particular filing -- may not have been  
9 -- but, clearly, the fact that my voting interest went up  
10 and my control level with the company that much more  
11 affirmed as a result of HCT Management's conveyance of  
12 general partnership interest to limited partnership  
13 interest. Therefore, the dilution occurring entirely in the  
14 corporate general partner, the net effect of which is that  
15 my position, which was not diluted, increased in its voting  
16 shares.

17 I kind of see that recollected and again, I'm not  
18 testifying that that's my handwriting, but you can see that  
19 somebody wrote over the 70 percent voting interest there and  
20 raised it to 78. And, if you did the math of HCT  
21 Management, Inc., allocation of general partner points, the  
22 limited points and you did the math, you would see that I  
23 now had 78 percent voting control as opposed to 70, because  
24 the general partner of the business was 27 points, if you  
25 will, and not 30 any longer.

1           But, the dilution occurred entirely in the  
2 corporate general partner. So, I have recollection of  
3 discussing this, I have recollection of explaining this to  
4 someone down there. I'm going to presume it wasn't Thomas  
5 Hart, because he would know that, that it was one of the  
6 paralegals that passed through and given that the 29th  
7 letter was coming from Dale Harberg, you know, the inference  
8 would be that I was discussing that change with Harberg, who  
9 wasn't there in '86 or wasn't involved in the case, or our  
10 file in '86 or so.

11           So, document refreshed, inferences.

12           Q     Now, one more. Go to Shurberg 91, please.

13           MR. TOPEL: Excuse me, what exhibit are we on?

14           MR. COLE: Ninety-one --

15           MR. TOPEL: Thank you.

16           BY MR. COLE:

17           Q     -- which is another ownership report and can you  
18 confirm that that's your handwriting?

19           A     Yes.

20           Q     And, that's also your date -- handwriting on the  
21 date, right?

22           A     Correct.

23           Q     Now, this is dated July 31, which would be two  
24 days after the Harberg letter which we just saw in Shurberg  
25 86. The answer in the lower right hand corner is back to no

1 and although you're -- the percentages under your name on  
2 the table, on the page which in the lower right hand corner  
3 numbered BH0799 are correct, according to what you just  
4 testified.

5 A Percentages --

6 Q Look in the lower right hand corner, BH0799 is the  
7 page we're looking at.

8 A Okay, correct.

9 Q Those are correct? Would you also look, please,  
10 sir, at the page that is the back of page one that 0799 is  
11 on, and the listing of documents relative to contract and  
12 instruments?

13 A Yes.

14 Q There's no reference there, is there, to the  
15 December 31, 1985 amended partnership agreement?

16 A Well, it says amended limited partnership  
17 agreement and certificate not applicable.

18 Q Right, that's a document which was dated 9/10/85?

19 A Yes.

20 Q So, there's no reference at all to 12/31/85?

21 A That's correct.

22 Q Do you know why the 12/85 agreement wasn't listed  
23 there?

24 A No idea whatsoever. I don't know for a fact that  
25 it needed to be, but I have no recollection of that.

1           Q     Once you signed this July 31, '87 report, do you  
2     recall whether you sent a fax to Baker & Hostetler for  
3     filing right away?

4           A     I do not recall.  If there's a document that can  
5     refresh my memory -- I don't recall.

6           Q     Did you anticipate or did you expect that having  
7     signed, since you had signed an ownership report that would  
8     be filed with the Commission on or before the deadline, that  
9     you had reminded Baker & Hostetler of?

10          A     It was my assumption and my practice to expect  
11     that an executed copy would be returned, that they would  
12     review it once again and submit it in a timely manner.

13          Q     Did anybody ever provide you with a return copy,  
14     as you describe?

15          A     I don't have a specific recollection of the  
16     document.  That was 11 years ago.

17          Q     Do you recall whether you ever asked anyone  
18     whether the ownership report had been filed with the  
19     Commission on or before August 3, 1987?

20          A     I don't have any specific recollection of that.  I  
21     have no reason to believe that what was set forth to do was  
22     not carried out.

23          Q     But, you don't recall checking on it at all?

24          A     I don't recall one way or the other.

25          Q     At this point in time, you were still intent on

1 complying with the letter and the spirit of the Commission's  
2 rules and policies, were you not?

3 A Intent and it's my belief then and now that I was.

4 Q But, you didn't know whether that ownership report  
5 was filed, do you?

6 A I physically didn't fly to Washington, D.C. and  
7 walk it over with a lawyer, no, I did not. So, if you want  
8 to characterize that as negligence, you know -- it was my  
9 practice to return it to them. It was their practice to  
10 send me a copy with a received stamp on it. It was our  
11 practice to put those in the appropriate file, whether they  
12 were the public file or the other FCC files that we  
13 maintained.

14 I have no specific recollection of why this event  
15 would be atypical. In fact, I have every recollection that  
16 this process was typical.

17 Q In what respect?

18 A We sent documents down, they marked them up, we  
19 marked them up. It went back and forth. We tried to get  
20 the best input, the most accurate as possible, and followed  
21 our normal procedures. Nothing special in the way we  
22 conducted the introduction or signing of this particular  
23 ownership file or filing or this particular FCC filing in my  
24 recollection.

25 There was nothing particularly unique about it



1 that I consternated over it in any way, shape or form, other  
2 than in the ordinary course of making our required and  
3 periodic filings.

4 Q Let me refer you to Shurberg Exhibit 21, which is  
5 the blue book. This is a two-page letter over Mr. Hart's  
6 signature which bears the received stamp of the FCC, dated  
7 August 3, 1987.

8 A Okay.

9 Q Did anyone ever provide you with a copy of this  
10 letter to be placed in the station's public file?

11 A I have no specific recollection. Did the letter  
12 originate in the public file or in the Baker files? What's  
13 the source of it?

14 Q I'm asking you?

15 A I mean, the letter is familiar to me, but I don't  
16 know where you got it from.

17 Q Do you recall discussing the preparation of this  
18 letter with Mr. Hart before he mailed it or before it was  
19 sent to the FCC?

20 A Yes, I do.

21 Q What do you recall about that discussion?

22 A The first paragraph makes reference to the death  
23 of Joel Gibbs and I recall some discussion and/or effort  
24 about whether or not a resolution to the Gibbs' estate was  
25 going to be achieved or would be achieved, which was

1 something that was proceeding in the Baker -- I'm sorry, the  
2 Carter Bacon, Bill Lance, Peabody & Brown chain. That was  
3 an Astroline Company or Corporation issue of his estate, as  
4 it swung back into ACCLP. So, I remember some discussion  
5 relative to that.

6 There were clearly lots of matters being discussed  
7 relative to the Shurberg versus the FCC. I don't recall  
8 them specifically impacting this filing document here or,  
9 I'm sorry, Mr. Hart's letter. I don't recall the specific  
10 discussions about it. There are lots of -- let's see, 1987  
11 was the case remanded to the Commission? No, I don't  
12 believe the case had been remanded yet. I recall that the  
13 Commission had reversed its position.

14 Oh, yes, it is. I'm sorry. It had been remanded  
15 to the Commission. I'm not sure if it says that right  
16 there. The case had been remanded to the Commission and  
17 that obviously had a lot of impact on where we were going  
18 and what we were doing at the time. The Joel Gibbs' issue,  
19 I recall specific discussions about an attempt to settle his  
20 estate out of Astroline Company or Corporation, which would  
21 have impacted our holdings.

22 Q Why did the remand from the Court of Appeals have  
23 any effect at all on your ability to prepare an ownership  
24 report?

25 A I don't recall.

1           Q     I thought you just testified that it had a lot of  
2     impact?

3           A     I don't recall what it was specifically.

4           Q     Do you recall --

5           A     Actually, I think my specific testimony was that I  
6     said the Shurberg v. FCC case, in general, had a lot of  
7     impact on what we did.

8           Q     But, it did not impact, did it, on what ownership  
9     structure of Astroline looked like as of a date certain,  
10    that would be on or around August 3, 1987, did it?

11          A     No, I've -- I wouldn't say that. I would say that  
12    in each instance, when we moved, we considered carefully how  
13    to optimize our standing before the Court and before the  
14    FCC, relative to the FCC minority policies.

15          Q     What do you mean, optimize?

16          A     We wanted to make sure that, you know, if we were  
17    making a tax decision, if we were making a monetary decision  
18    relative to the partnership agreement, that we continued to  
19    optimize every opportunity to comply with the 21 percent  
20    threshold -- the 20 percent threshold, comply with the  
21    voting control. To not do anything pejorative to our  
22    position.

23                So, if we were making the tax allocation thing, as  
24    referenced in the earlier documentation, we clearly  
25    discussed, I clearly discussed, Mr. Hart participated in the

1 discussions, to generate a high level of confidence that  
2 making a tax decision would not be reflective in a detriment  
3 or a dilution of my voting interest and control of the  
4 business.

5 So, to that extent, we were always aware of the  
6 constant scrutiny that you and your client were putting upon  
7 us in two different forms at this time, both at the FCC and  
8 the Appellate Court, regarding the structure of our company.  
9 So, we were always acting to maximize our standing and to be  
10 consistent in our representation of wanting to follow the  
11 letter and intent of the law.

12 And, I might add that we always strived to do that  
13 and I think we accomplished that. We gave equity points to  
14 minorities out of HCT Management, Inc. I always had at  
15 least 21 percent of the equity interest in the company. I  
16 always retained voting control of the business. I always  
17 operated it on a day to day basis.

18 You know, if the introduction of other minorities,  
19 such as Ms. Planell, as reflected in this document wasn't a  
20 positive and attractive, we moved to figure out a way to get  
21 her in so that her concerns about liability would be  
22 addressed and yet, we did encourage her to participate.

23 Q Did Mr. Hart explain to you why he was not going  
24 to file an ownership report and instead filed this letter?

25 A I think the document speaks for itself. I have no

1 additional, specific reference about this one document or  
2 this particular disclosure. It looks to me a fairly  
3 complete disclosure, but --

4 Q You concurred with the submission of this document  
5 as opposed to an ownership report, is that correct?

6 A Advice of counsel was that this was, my  
7 recollection, my inference here is that Mr. Hart said that  
8 this was the right thing to do and there wouldn't be a  
9 detrimental effect on our business and our standings. So,  
10 we did it this way.

11 Q Did Mr. Hart suggest to you that by filing an  
12 ownership report, as opposed to this letter, there might be  
13 a detrimental effect on your business?

14 A I don't recall that conversation or that  
15 suggestion. As a non-attorney, as I read the ownership  
16 report dated July 31, I don't see anything detrimental in  
17 it, but, I'm not an FCC attorney. You know, it wouldn't  
18 have raised any concern on my part, as long as the document,  
19 the information was accurate and the ownership percentages  
20 and so forth were properly reflected.

21 There's nothing about that that I would interpret  
22 to concern me and I don't recall Mr. Hart saying oh, my God,  
23 we can't show them this, which is, I think, what you're  
24 inferring, although that's not my job to do and I'm sorry.

25 JUDGE FRYSIK: No, you're not.

1 THE WITNESS: You're right, I'm not. I've already  
2 done this for nine days.

3 BY MR. COLE:

4 Q Do you recall whether a copy of this letter made  
5 it into or was provided you to put in your public file?

6 A I don't recall specifically. It was our practice  
7 that when these documents are returned with the stamp, that  
8 a copy went into the public file and a copy went into the  
9 FCC file in my office, and sometimes a copy went into Ms.  
10 Planell's office FCC file, as well.

11 I cannot recall specifically this document.

12 Q In reviewing Mr. Hart's August 3 letter before it  
13 was filed, did you have any concern that the question,  
14 limited partnership certification was not addressed at all  
15 in the August 3 letter?

16 A I'll repeat again. There is nothing about this  
17 slew of documents that you've been taking us through, the  
18 July 20, the prior letter, the memo, my memo -- there's  
19 nothing about this that stands out as being atypical.  
20 There's nothing about this that strikes me in any manner or  
21 effort on our part to do anything other than comply in  
22 practice accordingly.

23 If Mr. Hart suggested that we need more time to  
24 pull more things together, therefore, I'm going to file this  
25 letter, then that's what he suggested or that's what he did

1 and I ascended to their -- I have no recollection. In  
2 fact -- I'm sorry, I have a clear recollection that no  
3 conversations took place that said, gee, we've done  
4 something and we don't want to show our hand on it or we  
5 want to hide something or there's something bad here. Or, I  
6 don't want to do this, I don't want to do that.

7 No recollections, clearly, of anything like that  
8 occurring. I have clear recollection of us always looking  
9 to optimize how we presented our standing. It dealt with  
10 shutting off the tower. It dealt with the amount of  
11 children's programming we put on the air. It dealt with our  
12 minority hiring. It dealt with our efforts to recruit  
13 minorities as equity interest. We were always striving to  
14 comply and exceed the expectations of a minority-controlled  
15 company, according to those requirements.

16 We put kid's programming on the air that didn't  
17 have a prayer of making any money, simply to ensure that we  
18 were being good-faith compliant with our community  
19 responsiveness issues.

20 We produced local programming for that purpose,  
21 even though we were losing hundreds of thousands of dollars  
22 a month. I mean, there is nothing about this sequence --

23 JUDGE FRYSIK: You've said this already a number  
24 of times.

25 THE WITNESS: I'm sorry.

1 MR. COLE: Your Honor, I mentioned this morning  
2 that I did have a record of when Mr. Joel Gibbs died.

3 BY MR. COLE:

4 Q Mr. Ramirez, you testified that you didn't know  
5 when Mr. Joel Gibbs died, is that correct?

6 A I thought it was in 1986. I remember, I think it  
7 was the Fall. You said you thought it was May.

8 Q I have it and I'll refer the parties to this,  
9 because I don't see a need to make this an exhibit, but I'd  
10 be happy to. In the Astroline Company 1986 tax return,  
11 there's a Joel Gibbs K-1, which has a notation at the bottom  
12 which says, "Partner deceased 5/18/86." And, I'd be happy  
13 to make copies of this if you'd like, but I suspect  
14 everybody has copies and I believe this appeared in the  
15 bankruptcy exhibits under either Exhibit 51 or 53. But,  
16 it's -- 51 or 53, I believe, is correct. If anybody has  
17 trouble finding that, I'd be happy to make copies.

18 Now, you understand, Mr. Ramirez, that Astroline's  
19 partnership structure, as set out in the December '85  
20 partnership agreement, did not include certain insulation  
21 provisions which were required by the FCC, isn't that what  
22 you testified to?

23 MS. SCHMELTZER: Objection to the extent that  
24 you're saying that they were required by the FCC. I'll  
25 object to the form of the question. If you want to ask it



1 in some other form, that's fine.

2 JUDGE FRYSIK: Would you rephrase your question?

3 MR. COLE: Yes, Your Honor.

4 BY MR. COLE:

5 Q You were aware, or you became aware, that  
6 Astroline's partnership structure was not necessarily  
7 consistent with the insulation requirements which the  
8 Commission had developed?

9 MR. TOPEL: Objection. Commission requirements  
10 for what?

11 MS. SCHMELTZER: And, at what period of time, what  
12 period of time are you talking about?

13 MR. TOPEL: We're talking about 47 C.F.R. It's  
14 impossible for the witness to answer that question. I'm  
15 sorry, again, I objected on form.

16 JUDGE FRYSIK: Would you rephrase your question?

17 MR. COLE: Yes, Your Honor.

18 BY MR. COLE:

19 Q I refer, Mr. Ramirez, to your testimony at page  
20 25, paragraph 54, where you refer to --

21 A Page 25?

22 Q Page 25, paragraph 54. You refer to certain cases  
23 involving limited partnerships and new FCC interpretations  
24 concerning insulation of limited partners, do you see that  
25 language?

1           A     Yes.

2           Q     What requirements were imposed by those new cases  
3     and those new interpretations, to the best of your  
4     recollection?

5           A     As I've testified earlier, my understanding of the  
6     evolution here was that at the time we filed our initial and  
7     original and subsequent partnership amendments and ownership  
8     reports and intervening document, the Commission's view of a  
9     limited partner holding a general partner interest or, in a  
10    corporation structure, a minority shareholder holding the  
11    majority of the debtor funding of the business, they began  
12    to tighten the skew. Essentially, that the -- what was the  
13    phrase that was used -- they followed the money trail and  
14    began to get more and more restrictive on people sitting on  
15    both sides of the fence.

16                I remember specifically there was a case about a  
17    partner who had a 20 percent of the corporation voting  
18    interest and some other partners having the other 80  
19    percent, but that partner put up 85 percent of the cash and  
20    in that case, the Commission was ruling that that guy, by  
21    virtue of his money and his loans, was able to control the  
22    station.

23                So, as our, as we moved along to a comparative, to  
24    a new, to a license renewal -- as we moved towards a license  
25    renewal in the fall of 1988, again, there's evidence of it.

1 I've seen it here. There's a memo from Linda Bocchi to me  
2 and a letter from Ed Hayes, again, both from Baker &  
3 Hostetler, talking about these cases. We talked about them  
4 at length. The recommendation was that HCT Management, Inc.  
5 should be, conveyed entirely to me, the consideration was \$1  
6 and that would give us a greater degree of insulation from  
7 the standpoint of the anticipation of challenges in a  
8 comparative renewal process for our license, which was due  
9 to be filed in December of 1988.

10 So, that's my understanding of insulation and  
11 that's what I'm referring to here in paragraph 54. I  
12 believe that to be consistent with what I was just saying  
13 about us constantly striving to maximize the presentation of  
14 the business to comply with the Commission's policies.

15 Q Do you recall the name of the case or cases that  
16 you just talked about?

17 A I do not. They were administrative proceedings,  
18 not Circuit rulings. Like I had previously referred to TV  
19 9. Those were -- and, they come springing out of my, back  
20 of my recesses of my mind, as a result of all the stuff we  
21 did, you know, things like that, Red Lion and Oshboker and  
22 stuff. Those are Appellate decisions that related to the  
23 Commission.

24 This was, if I'm not mistaken, the references here  
25 by the Baker & Hostetler attorneys were to administrative

1 proceedings and quite possibly, a -- what do you call it  
2 when the Commission sets out a change of actual policy,  
3 actually makes a declaration? I forgot what that's called,  
4 but quite possibly there may have been something actually  
5 put out by the Commission that confirmed what the case law  
6 had been building up to, relative to this issue.

7 Q On November 22, 1988, you filed a pro forma  
8 assignment application to remove the limited partners from  
9 WHCT Management, Inc., isn't that right?

10 A I don't recall specifically.

11 MR. COLE: Actually, could we take a momentary  
12 break and I'll try to wrap this up?

13 JUDGE FRYSIK: Sure, then let's take a five-  
14 minute break.

15 MR. COLE: Thank you very much.

16 (Whereupon, a short recess was taken.)

17 JUDGE FRYSIK: We're back on the record.

18 MR. COLE: Thank you, Your Honor.

19 BY MR. COLE:

20 Q Okay, Mr. Ramirez, when last we left, you  
21 indicated you did not recall, I believe, the filing of a pro  
22 forma assignment application on November 22, 1988. Could  
23 you refer in the blue notebook, please, to Shurberg 23,  
24 Shurberg two three?

25 JUDGE FRYSIK: What exhibit did you say?

1 MR. COLE: Shurberg 23.

2 BY MR. COLE:

3 Q Does that refresh your recollection of preparation  
4 and filing of a pro forma application, pursuant to which you  
5 proposed to take over control or take over all the ownership  
6 interest in WHCT Management, Inc.?

7 A Yes.

8 Q Isn't it true, sir, that two months earlier, you  
9 had previously signed a similar application, and I refer you  
10 to Shurberg 97, which is in the white notebook? I will  
11 acknowledge for the record that at least my copy does not  
12 have a page one of the 316 form. The exhibit consists of a  
13 cover letter from Ms. Bocchi, page two of the 316 form and  
14 then two exhibits. Do you see the page that I'm talking  
15 about?

16 A Mm-hmm, yes, I'm sorry.

17 Q Is that your signature on the line of the name of  
18 app signee or transferee?

19 A Yes.

20 Q Look at the cover letter from Ms. Bocchi, please,  
21 which is addressed to you and am I correct that she  
22 indicates that it is imperative that the form be returned as  
23 soon as possible?

24 A That's what it says.

25 Q Well, you didn't file this application in

1 September of 1988, did you?

2 A From the sequence of documents that we're dealing  
3 with, which is Shurberg 23 and Shurberg 96, it would appear  
4 that we filed the document dated in November.

5 Q Do you know why Shurberg 97 was not filed in  
6 September?

7 A I do not recall.

8 Q Do you know why Ms. Bocchi said that it was  
9 imperative that the form be returned in her September 8  
10 letter?

11 A Don't recall.

12 Q Do you recall asking her?

13 A Don't recall.

14 Q Do you recall asking anybody?

15 A Do not.

16 Q Would you please look at Shurberg 96?

17 A I can --

18 Q I'm sorry?

19 A I was about to say, I can -- 96, did you say?

20 Q Yes.

21 A I can infer or contribute that between September 8  
22 and November 22 of 1988, the business was put into  
23 bankruptcy.

24 Q Now, I'm sorry, Shurberg 96 is a letter addressed  
25 to you from Mr. Hart, dated September 7, which would be the

1 day before Ms. Bocchi's letter. Mr. Hart's letter refers to  
2 the insulation requirement, does it not, in the third  
3 paragraph?

4 A Insulation?

5 Q The second sentence.

6 A From the third paragraph?

7 Q From the third paragraph?

8 A Correct.

9 Q The final sentence of that paragraph reads, "It is  
10 imperative that we amend the partnership agreement so that  
11 it accords with recent case law," is that correct?

12 A Correct.

13 Q Now, if both Mr. Hart and Ms. Bocchi are telling  
14 you on September 7 and 8 that it's imperative to make  
15 certain changes, can you tell me why you waited nearly three  
16 months to make those changes?

17 A Don't recall.

18 Q Please look at Shurberg 65, which is the red  
19 notebook, I believe? This is a letter from you to Mr. Hayes  
20 and Ms. Bocchi, dated August 8, 1989. That's your  
21 signature, isn't it?

22 A Yes.

23 Q Do you recall the circumstances which led you to  
24 write this letter?

25 (Pause.)

1           A     Yes. I don't see it here, but I've referenced  
2     several times today a memo from Linda Bocchi, who was one of  
3     the associates at Baker & Hostetler, regarding to this  
4     progression of the changes in the FCC's interpretation on  
5     issues of insulation. And, obviously, after reading the  
6     memo and some of the accompanying document, I had some  
7     additional questions.

8                     And, I'm referring to whether or not something  
9     needed to be done to the partnership agreement which would  
10    have to be done because HCT Management, Inc. was a party of  
11    the partnership agreement, and since we were trying to  
12    convey that entity to me in order to affect insulation, that  
13    would affect the partnership agreement.

14                    And, my references here to dilution of the  
15    minority was related to the integration credit you got on a  
16    comparative hearing. So, that's where the owner-operator  
17    integration concept, which is articulated in this memo, if  
18    you found it or if you read the evolution of those  
19    proceedings, as I mentioned before, it spends a lot of time  
20    on integration of owner-operator, as opposed to just passive  
21    owners.

22           Q     I'm sorry, the evolution of which proceedings?

23           A     Those various administrative decisions that  
24    triggered all of this, which I referenced earlier.

25           Q     I'm sorry, triggered all this, meaning the



1 insulation of limited partners?

2 A Right, right.

3 Q And, concern about these limited partners?

4 A Right, right.

5 MR. COLE: Your Honor --

6 THE WITNESS: And, then, in the second paragraph  
7 here, we're talking about a timetable issue here. My  
8 recollection or my understanding of this as to whether or  
9 not, once we filed our renewal application in December. So,  
10 that's my understanding of what was going on here.

11 MR. COLE: Your Honor, I had not previously  
12 offered this exhibit, Shurberg 65, and I would like to do so  
13 at this point, based on Mr. Ramirez's testimony.

14 MS. SCHMELTZER: No objection.

15 JUDGE FRYSIK: Received.

16 (The document referred to,  
17 having been previously marked  
18 for identification as Shurberg  
19 Exhibit 65, was received in  
20 evidence.)

21 MR. COLE: Then, similarly, I had not offered  
22 Shurberg 96, which is the letter from Mr. Hart to Mr.  
23 Ramirez and he just testified about it moments ago. I'd  
24 like to offer it on that basis.

25 MS. SCHMELTZER: Can I just see what it is?

1 MR. COLE: Sure, 96.

2 THE WITNESS: This is '89, this letter?

3 BY MR. COLE:

4 Q Yes.

5 A This is a whole year after --

6 Q Yes.

7 A -- the events of the previous set of documents  
8 that we're talking about. This is in the context of a  
9 completely different matter. I'm sorry. I misspoke.

10 Q What matter is this in the context of?

11 A This is in the context that, in August of 1989, I  
12 was now so frustrated with the bankruptcy proceedings, that  
13 I was contemplating leaving the day to day management of the  
14 business.

15 My failure or our failure to collectively come to  
16 a conclusion, this is eight months into the bankruptcy, to  
17 come up with a deal with the program suppliers to get this  
18 thing resolved, that I was compelling all parties involved -  
19 - my thinking was to try and threaten the program suppliers  
20 that I was going to leave -- I was going to retire or quit  
21 as general manager, but continue as general partner.

22 And, so, that's where I -- that second paragraph  
23 is what triggered it for me and I said, wait a minute, what  
24 does that have to do with 1988? And, that's when I looked  
25 up at the 1989.

1           So, this is in the context of whether or not the  
2     integration issue, which I knew to be a fact, would be  
3     diminished if I were not there. Because as of December 1 of  
4     1988, I was the minority operating manager that was put into  
5     the license renewal. And, what I'm driving at here is well,  
6     then, if I chose to leave, could someone else, some other  
7     minority, choose to be -- step into my shoes? They'd have  
8     to be insane, but they could have elected to do it, and  
9     still get the credit as being a minority-owned and operated  
10    business.

11           So, this is a year, almost a year later to the  
12    sequence of other filings that you're referencing here. I  
13    was referring to an earlier memo that Linda Bocchi had sent  
14    me, and then there's a letter that Ed Hayes sent,  
15    essentially memorializing the same thing back in '88, that  
16    talked about those administrative proceedings at the  
17    Commission that dealt with tightening up integration.

18           This letter doesn't have anything to do with that,  
19    to my recollection. So, I wanted to clear that up.

20           MR. COLE: Thank you. Your Honor, again, going  
21    back to Shurberg 96?

22           MS. SCHMELTZER: No objection.

23           JUDGE FRYSIK: Received.

24

25

1 (The document referred to,  
2 having been previously marked  
3 for identification as Shurberg  
4 Exhibit 96, was received in  
5 evidence.)

6 MR. COLE: Thank you. And, Your Honor, I'm just  
7 looking at my notes, do you have in the record that I  
8 offered Shurberg 133, which we discussed this morning? It's  
9 the letter from Mr. Ramirez to Herb and Fred concerning  
10 "Who's the Boss?" I know there's discussion about it, but  
11 my notes don't reflect that I actually offered it.

12 JUDGE FRYSIK: What?

13 MR. COLE: One three three.

14 MS. SCHMELTZER: I don't believe you did offer it.

15 MR. COLE: If I didn't, it was an oversight on my  
16 part, and I would like to do so at this point.

17 MS. SCHMELTZER: No objection.

18 JUDGE FRYSIK: That was 133?

19 MR. COLE: One thirty-three, Shurberg 133.

20 JUDGE FRYSIK: Okay, received without objection.

21 (The document referred to was  
22 marked for identification as  
23 Shurberg Exhibit 133 and was  
24 received in evidence.)

25 MR. COLE: Thank you, Your Honor.

1 JUDGE FRYSIAK: The other one was 96?

2 MR. COLE: Yes, sir.

3 BY MR. COLE:

4 Q Now, in Shurberg 65, which you have in front, it's  
5 the August 9, '89 letter, you refer to the more critical  
6 issue of profit insulation between general limited partners.  
7 What do you mean by the more critical issue? More than  
8 what?

9 A I don't know. My conclusion was the prior  
10 structure. If I recall, this is -- as I recall, when we  
11 filed -- when we filed the license renewal in 1988, December  
12 of 1988, we put forth that HCT Management, Inc. was now my  
13 corporation and therefore, I had 30 of the 30 general  
14 partner positions. And, it's my recollection that a number  
15 of different people tried to contest that. I think the  
16 program suppliers contested it in the Bankruptcy Court. I  
17 believe -- well, I may be mistaken about that, but I think I  
18 have some vague recollection rolling in the back of my head  
19 that you and your client opposed it, or made some comment  
20 about it and that since no action had been taken on the  
21 application other than to note it for, to note that it had  
22 been received, I could be referring to that.

23 The timing of that actual conveyance in the  
24 September-October period there might still be an open issue,  
25 because I do recall specifically that the bankruptcy guys

1     were trying to make something out of it. And, I think that  
2     you and your client were trying to make something out of it,  
3     but I'm not certain about the second part. I'm clear about  
4     the bankruptcy proceeding.

5           Q     At page 25 of your testimony, toward the end of  
6     paragraph 54, you indicate that because WHCT Management,  
7     Inc. faced a comparative renewal challenge from Shurberg, at  
8     the suggestion of Baker & Hostetler, certain changes were  
9     made. But, isn't it the case, Mr. Ramirez, that Mr.  
10    Shurberg's application had been on file since 1983, and  
11    therefore, a comparative challenge or comparative threat had  
12    existed since even before Astroline filed its initial  
13    assignment application in 1984?

14           A     Well, that was a matter subject to various legal  
15    processes, of which we ultimately won -- well, not that  
16    specific issue at the Supreme Court. It was the contention  
17    of the Commission, in all of its pleadings before the  
18    Appellate Court, and in its pleading at the Supreme Court,  
19    that Shurberg's application of 1983 was not timely filed and  
20    therefore, not a valid competitor for the license. In fact,  
21    if I'm not mistaken, that's the basis of Mr. Hoffman's suit  
22    against your client Kataya, for misrepresenting his claim in  
23    the bankruptcy, that he really didn't have a right at this  
24    license.

25                   So, what we were doing there is anticipating,

1     which what your client ultimately did was to file a letter  
2     reasserting that that application was there. We filed, it  
3     said, you know, it was not timely filed and therefore, he  
4     failed to file again and we were anticipating that, given  
5     the climate at that time, that there would be other folks  
6     who would file competing applications, which, in fact, there  
7     were. There were five applicants who filed in competition  
8     with that renewal window, your client being one of them.

9           Q     Now, you mentioned --

10          A     I think I've stated several times here today that  
11     we were trying to insure and maximize our opportunity to  
12     retain the license that we invested so much in.

13          Q     You mention in paragraph 54 on page 25 that  
14     certain of the cases that were apparently brought to your  
15     attention by Baker & Hostetler were not minority distress  
16     sale cases, do you see that? You specified they were not  
17     minority distress sale cases.

18                MS. SCHMELTZER: It doesn't say certain. It says  
19     "the cases."

20                BY MR. COLE:

21          Q     I'm sorry, it says, "The cases that were brought  
22     to my attention were not minority distress sale cases," do  
23     you see that?

24          A     Yes. There were only 38 distress sales done at  
25     that time, in the whole history of the Commission.

1           Q     Earlier in that paragraph in line two, rather, you  
2     refer to "certain recent comparative broadcast cases," do  
3     you see that?

4           A     Yes.

5           Q     Now, did you understand that there might be a  
6     difference between the FCC's comparative and its minority  
7     distress sale policies, insofar as, well, that there were  
8     any differences between the FCC's comparative and minority  
9     distress sale policies?

10          A     My reference here, if unclear, is that these were  
11     other minority-involved cases. They weren't specifically  
12     distress sale cases. They were more likely other tax  
13     certificate credits or preference in lottery cases.

14          Q     Or preferences in comparative hearings?

15          A     Or preferences in comparative hearings assigned  
16     for minority integration, yes.

17          Q     Did you attach any significance to the fact that  
18     those cases were not distress sale cases, they were some  
19     other policy cases, particularly comparative policy?

20          A     Distress sale? No, because it was our position,  
21     my recollection of this is that it was our position that we  
22     were going to assume a renewal status and therefore, we were  
23     presenting ourselves as a minority-integrated operator,  
24     looking through a comparative process.

25                     Our discussions with Ed Hayes and my discussions



1 with Ed Hayes and Linda Bocchi in this period were that  
2 since we were continuing the appeals at the Appellate Court,  
3 we were going to go to the Supreme Court or maybe at this  
4 point in time, we were actually seeking, sir, that we would  
5 continue to assert a renewal preference as the licensee. We  
6 felt that we had operated the license in more than  
7 compliance with the Commission's policy and that our record  
8 of operation was something that we wanted to get into the  
9 file.

10 And, therefore, I think that gaining it under  
11 distress sale or gaining it under some other vehicle was  
12 irrelevant. What was relevant then would be a comparative  
13 proceeding on our performance, as an operator in the  
14 comparative proceeding, which would be a review of what we  
15 have done in the preceding five, four years, or three and a  
16 half years.

17 Q Now, you've testified several times this afternoon  
18 and this morning that you owned a 21 percent interest in  
19 Astroline Communications Company Limited Partnership at all  
20 times, is that correct? I've got that right?

21 A Yes, I owned 21 percent of the equity.

22 Q That never changed at all when the partnership  
23 agreement was substantially amended in December of 1985,  
24 that's your testimony, is that correct?

25 A That is correct.

1           Q     What exactly do you mean by owned, when you say  
2     that you owned 21 percent equity?

3           A     Twenty-one percent of the equity of the business  
4     and 70 percent of the -- 70 percent plus of the voting  
5     rights attached to that interest were always under my  
6     control and my direction, under my influence.

7           Q     Well, you couldn't sell the station if you wanted  
8     to by yourself, could you?

9           A     No general partner, sole general partner, could  
10    sell the business. It was an element of the partnership  
11    agreement that you needed all general partners to confer. I  
12    think maybe even some limited partners, to sell a major  
13    portion of the assets.

14          Q     You couldn't borrow money or pledge the station or  
15    borrowed funds without the consent of the others, could you?

16          A     To certain degrees, that was under interpretation.  
17    In other words, I could enter a lease in the course of  
18    running the business. I could buy a television show in the  
19    course of running the business. Could I borrow \$10 million  
20    against the real estate and leave town? No.

21          Q     And, you couldn't sell your own share, could you,  
22    to somebody else? If somebody walks in and says, Mr.  
23    Ramirez, I'd like to buy that nice 21 percent equity  
24    interest you own?

25          A     I believe that there were first right of refusal

1 and tag along type provisions and things like that in there.  
2 I haven't looked at that section in a while.

3 But, that's -- well, that's not unusual, you know.  
4 Like a first right of refusal to inside partners is not an  
5 unusual characteristic. I just finished negotiating a deal  
6 like that last week.

7 Q Let me refer you, Mr. Ramirez, to the gray  
8 notebook at Shurberg 9, which is the December 31, 1985  
9 partnership agreement.

10 A December 31, 1985 partnership agreement.

11 Q Page 16.

12 A I'm sorry, what exhibit was that?

13 Q Page 16 -- I'm sorry, it's Shurberg 9.

14 A What paragraph?

15 Q It's 6.1(b).

16 A Wait, wait.

17 Q I'm sorry, page 16, Section 6.1(b).

18 A Oh, page 16, I'm sorry, I was on page nine.

19 Q No problem.

20 A Sixteen, 6.1(b).

21 Q Am I correct that that says, "No general partner  
22 shall have the right to sell, assign, transfer or encumber  
23 his interest as a general partner without the written  
24 approval of the other general partners and the written  
25 approval of limited partners holding the majority of the

1 percentage interests held by all limited partners." Is that  
2 what it says?

3 A Yes.

4 Q So, you couldn't even borrow money against your  
5 interest without getting approval of everybody?

6 A That's correct.

7 Q Strike that, without getting approval consistent  
8 with this, which would be the general partners and majority  
9 of limiteds? So, again, my question to you is, what exactly  
10 did you own?

11 A Twenty-one percent of the equity of this business  
12 and whatever voting rights, the majority voting rights that  
13 were assigned to the general partner. If the general  
14 partner accepted the restrictions on the conveyance of major  
15 elements of the assets or major indebtedness, that's what I  
16 owned.

17 If it says here that I could buy programming  
18 without calling up my mother, I could buy programming  
19 because I had 70 plus percent of the interest of the voting  
20 shares, I should say.

21 Q Even in the event of a sale of the station, again,  
22 we reviewed earlier on, the distribution scheme that  
23 provided for a repayment to the limiteds of all of their  
24 capital contributions as adjusted, pursuant to what you  
25 described, before there would be any payout at all to the

1       generals, other than the 1 percent or a portion of 1  
2       percent, is that correct?

3           A       That's correct.

4           Q       Was there ever a time that the level of investment  
5       in capital accounts of the limited partners of Astroline did  
6       not exceed the fair market value of the station?

7           A       The capital accounts of the limiteds did not  
8       exceed the fair market value of the station? I would  
9       clearly point to the HSN offer.

10          Q       What was the extent of the capital accounts at  
11       that point?

12          A       My recollection from that, at the time we  
13       discussed it, the offer price was \$17 million north. It  
14       could have been as much as 19 in my recollection and my  
15       recollection is that we had a substantial profit opportunity  
16       there, \$4, \$5, \$6 million is my recollection. You could  
17       track the two, because I know the documents are here. The  
18       HSN thing is in the file from the bankruptcy and the  
19       auditors' reports are here. They could show you the  
20       attributed capital.

21                 The offer came in late in the year, so you could  
22       back out 112 or something like that and you'd see that  
23       pretty clearly, there was a positive equity position in the  
24       business, had we been in a position to sell it at that time.

25          Q       Well, precisely. That was an offer for something

1     you didn't have, isn't that correct?

2             A     That's correct. We had a challenge on the license  
3     and therefore didn't have the final conveyance.

4             Q     Mr. Ramirez --

5             A     I would point out that subsequent to that, there  
6     were propositions made to acquire the station and the  
7     willingness to accept the risk of the outcome of the Supreme  
8     Court decision, which, on a capital accounts basis, would  
9     have created a nominal profit based on the allocation of tax  
10    losses. That is -- specifically, I'm referring to  
11    discussions we had with Synchronal and HSN together in that  
12    summer before it went into the bankruptcy.

13            Q     That would be in 1988?

14            A     In 1988, yeah. There were north of \$25 million or  
15    \$22, \$23 million invested, but on a capital accounts basis,  
16    because of the flow of tax losses, their actual capital  
17    account would have probably been in the area of \$12 million  
18    or \$14 million, if I recall. And, Synchronal and HSN were  
19    willing to give us a few million upfront for the fixed  
20    assets and then hold a contingent payment based on the  
21    successful resolution of the Supreme Court case and then  
22    take over operation on a very complicated transaction, which  
23    obviously, you know, we got the down and around to and said,  
24    well, that's not worth pursuing.

25                   But, to answer your point, there were two

1 instances that I can recall specifically where market value  
2 by reasonable and responsible and capable buyers were  
3 presented that showed an ability to gain a value for the  
4 business and therefore, equity greater than the invested  
5 capital and/or liabilities.

6 Q If you had a clear license?

7 A If we had -- well, no, that second instance, it  
8 was not dependent upon that. You would have had a note  
9 payable which only perfected. But, technically, you'd have  
10 a value.

11 Q That was, I should also point out, if you were  
12 talking about prior to the bankruptcy action, then you would  
13 not be talking about the Supreme Court?

14 A Yeah, or whatever the particular venue we were in.

15 Q Now, if you could turn, please, to Shurberg 25,  
16 and here, the pagination is a problem. I apologize. I'm  
17 looking for the --

18 A Twenty-five is blue?

19 Q Black.

20 A Black?

21 Q It should be the eighth page of Shurberg 25. This  
22 is your K-1 schedule for the 1984 Astroline tax return.

23 A No, twenty -- I'm sorry, oh, yeah, I'm sorry, the  
24 K-1 is attached, right.

25 Q Page eight. I don't have a pagination, sorry.

1           A     Okay.

2           Q     Look at the responses that are indicated in  
3     Section D immediately under the address block for Astroline  
4     Communications. Do you see that Section D block, where it  
5     says, "Enter partners' percentage of: profit sharing," then  
6     there's a separate line for loss sharing and a separate line  
7     for ownership of capital. Do you see that?

8           A     I'm on the wrong page.

9           MR. TOPEL: Excuse me.

10          THE WITNESS: What page, not the first page,  
11     obviously? This one is marked ten.

12          (Pause.)

13          BY MR. COLE:

14          Q     See where I'm --

15          A     Yes.

16          Q     There, in the first column, the column is headed  
17     "Before Decrease or Termination" and that entire column is  
18     marked with an N/A, which I assume means not applicable.  
19     But, the end of the year shows 21 percent profit sharing and  
20     21 percent loss sharing for you, is that correct?

21          A     That's correct.

22          Q     That corresponds to what the 1984 partnership  
23     agreement said, doesn't it?

24          A     Correct.

25          Q     There's nothing in there, there's no entry at all,



1 for ownership of capital, is there?

2 A That's correct.

3 Q Now, turn to Shurberg 26, please?

4 A I'm sorry, 26.

5 Q And, the 22nd page of this and again, I am very,  
6 very apologetic about forcing everybody to count pages, but  
7 it is the 22nd page. It's your K-1, Astroline  
8 Communications Company for 1985.

9 A Okay.

10 Q Are you with me on that?

11 A Yes.

12 Q Let's look in D, and there again, it's got the  
13 same questions and the same columns and for enter partner's  
14 percentage of profit sharing, it lists in column one before  
15 decrease or termination, 21 percent but at the end of the  
16 year, it's 0.75 percent and that corresponds to the changes  
17 effected by the 12/31/85 partnership amendment, doesn't it?

18 A Correct.

19 Q The next line is loss sharing and that also starts  
20 at 21 percent, which is the way it was, and reduces to 0.75  
21 percent, which is the way it was under the new agreement,  
22 and that's correct, right?

23 A Yes.

24 Q But, then, ownership of capital starts off at 21  
25 percent and that also goes down to 0.75 percent, doesn't it?

1           A     Yes.

2           Q     So, this would reflect that your percentage of the  
3 ownership of capital had been reduced from 21 percent to  
4 0.75 percent, is that correct?

5           A     Capital, yes.

6           Q     Okay, let's move to Shurberg 27. It's the 15th  
7 page in Shurberg 27. Again, I direct your attention to  
8 Block D, still in the upper right hand portion of the page.  
9 There again, we have the table where your profit sharing is  
10 entered as 0.7778 percent, your loss sharing is entered as  
11 0.7778 percent and your ownership of capital is also marked  
12 as 0.7778 percent and that's correct, isn't it?

13          A     That's 100 percent consistent with my  
14 understanding of what's going on, the change from '85 to '86  
15 there, from 72 to 77 reflects the dilution effected upon HCT  
16 Management, Inc. for conveyance of points from general  
17 partners to limited partners, so that's correct, as well.

18          Q     Let's move to Shurberg 28, please, and this is  
19 just page eight. Here again, in the Block D, in the upper  
20 right hand portion of the page, there's the same rows and  
21 columns and, again, profit sharing is listed as 0.7778  
22 percent, loss sharing is listed as 0.7778 percent and  
23 ownership of capital continues to be listed as 0.7778  
24 percent, is that correct?

25          A     That's correct.

1           Q     Now, you received your own copies of the K-1 forms  
2 prior to be filed with your personal return, didn't you?

3           A     Yes. And, I also had to approve these as the  
4 managing general partner.

5           Q     And, also, you're the tax matters partner, are you  
6 not?

7           A     Correct. I worked with Kent Davenport to produce  
8 these.

9           Q     These were accurate representations concerning  
10 your ownership of Astroline?

11          A     It had nothing to do with my ownership of  
12 Astroline.

13          Q     Could you explain that?

14          A     It's my understanding, from my discussions with  
15 Mr. Davenport, that the reference line there "capital" is a  
16 reference to the capital accounts concept. There are three  
17 concepts to bear in mind. Equity, contribution or capital  
18 account and voting interest.

19                Equity is as I've stated earlier, is an interest  
20 in the value of the business or the residual of the  
21 business. When you take out a market, when you achieve a  
22 market valuation, some liquidation event, you go public, you  
23 sell it, you close it. There's a value. Subtract from that  
24 the liabilities and obligations of the business. If there's  
25 something positive or negative left over, I own 21 percent

1 of that at all times. At all times after the change in the  
2 partnership agreement that I have .772 or .72 of the capital  
3 accounts.

4 I was not contributing any money. I'm a general  
5 partner. The losses were being allocated and the future,  
6 the profits, would have been allocated as disclosed in  
7 numerous documents here, until those capital accounts became  
8 rectified or came into balance, until we got zeroed out  
9 again. That's a capital contribution line. It has nothing  
10 to do with the ownership of the equity of the business.

11 And, finally, there's a voting interest. At all  
12 times was my voting interest, the controlling position of  
13 the general partner, which is where all the voting elements  
14 remain. It was always 21 percent of 30 or 21 percent of 26,  
15 so it was always either 72 or 78 percent of the voting  
16 interest.

17 This declaration, as we've stated for two days in  
18 the bankruptcy proceeding, has nothing to do with the  
19 ownership of the equity of the business nor my voting  
20 responsibilities or elements as a general partner in the  
21 business. It is purely -- and I know you have declarations  
22 here from Kent Davenport, who is the tax -- he's not only an  
23 auditor and a tax partner, he's an attorney. He's probably  
24 got more degrees than Carter has liver pills related to this  
25 stuff and will explain to you on Monday, and has declared in

1 the audited reports, in the management discussions, in the  
2 auditors' reports from Arthur Andersen, every single year,  
3 it talks about allocations of profits and losses and it  
4 talks about my ownership interest of equity.

5 Fully disclosed, big, nice, block 12 print  
6 lettering in there. The concept has been debated for three  
7 days in the bankruptcy trial and once again, I'm taking you  
8 through it. Capital ownership does not relate to equity  
9 ownership, does not impact voting interest. Your statement  
10 as presented was incorrect.

11 JUDGE FRYSIK: All right, thank you very much.  
12 Bureau, cross-examination?

13 MS. WITHERS: Yes, I have additional cross-  
14 examination. Hopefully, it won't take up too much of your  
15 time. I know you're tired.

16 THE WITNESS: That's quite all right. I prefer to  
17 work our way through it.

18 BY MS. WITHERS:

19 Q Let me start with the tax returns that we were  
20 just looking at, so you don't have to pull them back out  
21 again. I understand your testimony as to your understanding  
22 now with regards to those returns, but I want to also refer  
23 you to your testimony on page 23, with regard to those  
24 returns.

25 It's at the top of the page where you say, "I did

1 not notice that the returns reported my ownership of capital  
2 as less than 21 percent."

3 A Yes, there were -- I'm sorry.

4 Q Actually, I'd just like you to explain that  
5 statement in conjunction with what you just said?

6 A There was one other return. If you notice in some  
7 of these returns, it listed the 21 percent in the first  
8 column and then nothing and then later, it listed nothing in  
9 there. And, then, in discussions with Davenport after this  
10 came up in the bankruptcy proceedings and so forth, he said  
11 he made an error that was irrelevant to the filing, but he  
12 made an error. I'm not clear on what it was and that's what  
13 I'm referring to here.

14 Q Okay. Also, you've just testified as to what your  
15 prior understanding is, what capital contributions or  
16 capital to the partnership meant. Was that your  
17 understanding in 1984?

18 A '85.

19 Q I'm sorry, 1985?

20 A Yes, there's a memo in this today that we've gone  
21 by today in this record that is articulation from Kent  
22 Davenport to us. I believe it was one that Roger Eastman  
23 was noted in and so forth. I participated in that call. I  
24 had a subsequent discussion with Mr. Davenport where he  
25 explained that to me.

1           I had a subsequent meeting with George Nebel, when  
2       he was in my office in Hartford, to clarify the issue. So,  
3       to the degree that I have had more sophistication about tax  
4       matters to date, 14 years hence of business and so forth,  
5       yes, my understanding is improved. My basic understanding  
6       of the concept back in 1984 was as reflected here and in  
7       part -- and mostly reflective of what I said today.

8           I had specific discussions with Davenport,  
9       specific discussions with George Nebel regarding this issue,  
10      was involved in the phone call where it was discussed, read  
11      the partnership agreement at the time that it was delivered,  
12      had a, you know, substantive understanding of what it meant.

13       Q     Thank you. I also want to refer you to page seven  
14      of your testimony. You indicated, and you've also testified  
15      today with regard to this, that Mr. Hart briefed you on a  
16      possible structure for the limited partnership prior to your  
17      meeting over Memorial Day weekend?

18       A     Yes.

19       Q     Do you see where that's referring? It's at  
20      paragraph 17, the third line?

21       A     Right.

22       Q     To the degree that you discussed this with Mr.  
23      Hart prior to the Memorial Day weekend, did you offer him  
24      any input or suggestions as to what you wanted to see in the  
25      limited partnership agreement?

1           A     Specific suggestions, no. My recollection is that  
2 we talked pretty at length about the required structures, in  
3 terms of the voting control and, you know, if it was a  
4 corporation or a partnership. We talked about, you know,  
5 day to day operations issues and things like that and the  
6 importance of compliance. And, we talked about the  
7 discomfort of someone putting a bunch of cash, \$10, \$12, \$15  
8 million essentially at my discretion, and would they be  
9 willing to comply with that and so forth? Did they  
10 understand whether it was a corporate structure or a  
11 partnership?

12                     I did not give him specific clauses nor had I  
13 reviewed a partnership, that particular partnership document  
14 in those prior meetings.

15           Q     You testified today and also in your testimony  
16 that after you received the version of the limited  
17 partnership agreement, that you walked it down to your  
18 attorney. In the course of discussing it with your  
19 attorney, did you make any suggestions or edits to the  
20 limited partnership agreement?

21           A     He made numerous suggestions to me and pointed out  
22 numerous issues. And, I have recollection of sending that  
23 over to Peabody & Brown on the other side of Boston. Which  
24 of those, if any, I cannot tell you whether they were  
25 specifically incorporated. It's clearly a compressed time



1 frame and one of the things we were certain about, my  
2 attorney and I, were the vested powers in the general  
3 partner, to effect partnership changes, proposed partnership  
4 changes to be adopted in the future.

5 But, I cannot tell you with any degree of  
6 specificity that he identified a specific thing that  
7 concerned him, then I got it changed. That would be a  
8 mischaracterization.

9 There were things that we marked up. That was  
10 forwarded and I don't recall, you know, if he said put this  
11 hand over here or take this whole paragraph out, if that was  
12 done. I don't recall.

13 I think, I recollect in the bankruptcy that there  
14 was a copy of that in somebody's file.

15 Q A copy of?

16 A Of my marked up version. I thought I remembered  
17 that. I may be mistaken, but don't hold me to that. I  
18 thought I remembered that.

19 Q On page eight of your testimony, and it's at the  
20 top of the page, you state that you've received assurances -  
21 - are you following me --

22 A Yes.

23 Q -- from Mr. Boling, Mr. Sostek and Mr. Lance, that  
24 you were to be in control of station affairs.

25 A Yes.

1           Q     Did you receive any similar assurances that you  
2 would be in control of the partnership?

3           A     I don't have specific recollection of discussing  
4 control of the partnership. I don't know that at my  
5 thinking at that point in time I was distinguishing the two.

6           Q     Did you have subsequent conversations with them  
7 with regard to your control of the partnership versus  
8 control of the station?

9           A     Partnership matters, I would say, yes, we had  
10 discussions about the check process, you know, in '86 or  
11 '87. And, you know, I told them I would prefer Tommy -- Tom  
12 Hart and I said we'd like to get them down to Hartford  
13 sooner than they actually occurred. They were resistant to  
14 that.

15                     I elected to accommodate them on that. You know,  
16 we had a lot of -- again, let me -- the context of this  
17 business after September -- the context of the business  
18 after the decision to close, with the appeal pending back in  
19 December of '84 was, you know, shaky. But we had a lot of  
20 opinion that the Shurberg procedural issues were going to  
21 fall, they wouldn't oust us. That's why we elected to  
22 close.

23                     In September of '86, when the Commission flipped  
24 and, I think it was the Metro case that was overturned and  
25 then, I'm sorry, the Commission's response in, I think it

1 was Metro, in that fall, the Commission flipped its opinion.  
2 They had been in support of a female preference, if I'm not  
3 mistaken in the Metro case initially, and then they flipped.  
4 Then the Court said, wait a minute, you've got this  
5 Astroline Shurberg case sitting here. What's your opinion  
6 on that? In that one, they said, well, we still think it  
7 constitutional -- the Commission went from being on our side  
8 to not being on our side. That, if you'll pardon the  
9 French, freaked out these people a lot.

10 And, so, progressively, from the actual closing  
11 date back in January of '85, right up until the day we  
12 walked into bankruptcy, I was on a selling road as the -- I  
13 was selling them on how we could continue this, on what were  
14 reasonable risks to take, on why they should continue to  
15 invest money and why they should go past \$10 million, why  
16 they should go past \$15 million.

17 You know, I wanted to do the Whaler's deal, it was  
18 going to burn more cash. Would you continue to support it?  
19 This is what I think it can do for the business. So --

20 Q Right, I understand --

21 A I characterize those as partnership issues,  
22 because they dealt with funding and they dealt with the  
23 manner in which, you know, investors put money into the  
24 business.

25 So, to the extent that partnership issues arose, I